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TC 1700

 PATENT  
 ATTORNEY DOCKET  
 NO. 70482

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Coppens et al.

Serial No.: 08/898,736

Filed: July 23, 1997

 Title: PROCESS FOR THE  
 PREPARATION OF MALTED  
 CEREALS

Group Art Unit: 1761

Examiner: C. Sherrer

CERTIFICATE OF MAILING

 I hereby certify that this  
 paper is deposited with the U.S.  
 Postal Service as first-class mail  
 in an envelope addressed to:  
 Commissioner of Patents &  
 Trademarks, Washington, D.C.  
 20231, on this date.

 10/3/01 *[Signature]*  
 Date Registration No. 30,192  
 Attorney for Applicants

DECLARATION RE ATCC DEPOSIT

 Honorable Commissioner of Patents  
 and Trademarks  
 Washington, D.C. 20231

Dear Sir:

The undersigned attorney certifies that the following  
 microorganisms are on deposit with the American Type Culture  
 Collection:

- a) *Rhizopus oryzae* NRRL 1427, now assigned PTA-3670;
- b) *Rhizopus oryzae* NRRL 1891, now assigned PTA-3671;
- c) *Rhizopus oryzae* ATCC 4858, now assigned PTA-3627;
- d) *Aspergillus oryzae* ATCC 14156, now assigned PTA-3628; and
- e) *Rhizopus oryzae* ATCC 9363, now assigned PTA-3629.

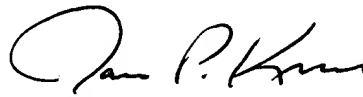
As indicated in the attached copies of the deposit forms,  
 and in accordance with 37 CFR 1.808 and MPEP 2404, the above-  
 identified microorganisms will be irrevocably and without

restriction or condition released to the public upon issuance of a patent on the present application.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By:



James P. Krueger

Registration No. 35,234

Date: **OCT 03 2001**

Fitch, Even, Tabin & Flannery  
120 So. LaSalle St., S/1600  
Chicago, IL 60603-3406  
Phone: 312/577-7000  
Fax: 312/577-7007

## Budapest Treaty Deposits

# American Type Culture Collection

10801 University Blvd., Manassas, VA 20110-2209

Phone (703) 365-2700; fax (703) 365-2745; e-mail [applied-sci@atcc.org](mailto:applied-sci@atcc.org)

# ATCC™

TO DEPOSIT OR TO CONVERT A DEPOSIT TO MEET THE REQUIREMENTS OF THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### ALL QUESTIONS MUST BE COMPLETED IN ENGLISH. PLEASE USE ONE FORM FOR EACH STRAIN DEPOSITED.

1. Name of deposit. If **microorganism**, give complete scientific name including genus and species and source of material; if **virus**, give name, whether plant or animal, and source including geographic location; if **cell line**, give tissue and species, geographical source of isolation, and any known hazards associated (HIV, EBV, etc.); if **genetic materials**, give name of organism from which vector, clone or library is derived, source of the DNA insert identified by species (e.g. human, mouse) or scientific name, and give name of gene and identity of the host organism; if **consortia or mixed culture**, each component of the mixture must be identified; if **seeds, embryos, insect eggs, etc.**, give common name, scientific name, and geographical source.  
Fungi, Rhizopus oryzae ATCC No. 4858
2. Strain designation (i.e., number, symbols, etc.) ATCC No. 4858  
The strain designation must correspond with the vial labels.
3. Is this an original deposit under the Budapest Treaty? YES
4. Is this a request for a conversion of a deposit already at ATCC to meet the requirements of the Budapest Treaty? If so please indicate ATCC designation. YES ATCC No. 4858
5. Is this deposit a mixture of microorganisms or cells? NO
6. Provide details necessary to cultivate, test for viability, and store deposit. If mixture, provide description of components and a method to check presence. If plasmid, provide name of host and antibiotic resistance.  
SAME AS ATCC 4858
7. Provide sufficient description so that ATCC may confirm deposit properties (e.g., Gram negative rod).  
SAME AS ATCC 4858
  - a. If deposit is a cell culture, is it being cultured in the presence of antibiotics? If so, please list the antibiotics.  
N/A
  - b. If deposit is hybridoma, what is the isotype of antibody produced? N/A
8. Is this strain hazardous to humans? NO Animals? NO Plants? NO. If yes, what is the recommended biosafety level for working with this strain? \_\_\_\_\_. (Refer to Biosafety in Microbiological and Biomedical Laboratories, 4th ed. U.S. Dept. of Health and Human Services at [www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm](http://www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm)).
9. Availability: Prior to the issuance of a U.S. Patent, ATCC will only make a culture available as instructed by the depositor or relevant patent office. Samples must be provided to a specific investigator if a pertinent patent office under the Budapest Treaty instructs ATCC to do so. The following questions must be answered:
  - a) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to anyone who requests a culture? If yes there are no restrictions on distribution. Answering n will ensure the deposit is not available until the patent has issued. Yes \_\_\_\_\_ No X
  - b) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to requestors which satisfy patent offices in countries not signatory to the Budapest Treaty? Yes \_\_\_\_\_ No X  
If yes state which countries. \_\_\_\_\_

Please note that if you are converting your deposit to meet the requirements of the Budapest Treaty and your deposit has already been released for distribution due to the issuance of a U.S. patent, you **cannot** restrict it from further distribution.

After a U.S. patent issues and we are so notified, ATCC makes the culture available to anyone who requests it, as allowed under USPTO Rules and Regulations (37 CFR 1.808 [a](2)).

10. ATCC will notify you of your ATCC number after confirmation of viability testing is complete.

Name of individual to notify: JAMES P. KRUEGER

Fax: 312-577-7007

Phone: 312-577-7000

E-mail: jpkru@fitcheven.com

11. Payment by check, or credit card (Mastercard, VISA or American Express), must accompany the deposit unless prior arrangements for billing have been made and approved. ATCC accepts Purchase Orders in the correct amount:

Purchase Order No. \_\_\_\_\_

Check No. \_\_\_\_\_

Credit Card number. Please indicate MasterCard, VISA, or AE. \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Name shown on card: \_\_\_\_\_

(Please type or print clearly.)

\_\_\_\_\_  
Signature of card holder

PAYMENT: ATCC MUST HAVE A BILLING ADDRESS, CONTACT PERSON, PHONE AND FAX NUMBER FOR ALL DEPOSITS:

JAMES P. KRUEGER

FITCH EVEN TABIN & FLANNERY - SUITE 1600

120 S LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

12. Name, address, telephone and facsimile number of your attorney of record. \_\_\_\_\_

JAMES KRUEGER, FITCH EVEN TABIN & FLANNERY, SUITE 1600, 120 S LaSalle St.  
Chicago, IL 60603 (Ref: Docket or Case No. 70482)

13. **MUST BE COMPLETED.** Deposited on behalf of: (Verify with your management who owns the deposit. The owner is usually a company or institute and not an individual.) Cargill, Inc.

I understand and agree that the deposit may not be withdrawn by me for a period specified in Rule 9.1 of the Budapest Treaty (at least 30 years after the date of deposit or 5 years after the date of the most recent request for the deposit, whichever is longer), and that if a culture should die or be destroyed during the life of the patent or the period of time so specified, it is my responsibility to replace it with a living culture of the same organism or cell. In the cases of viruses, cell cultures, plasmids, embryo s, and seeds, it is my responsibility to supply a sufficient quantity for distribution for the period of time specified above.

JAMES P. KRUEGER

Typed Name

James P. Krueger

Signature

AUG 02 2001

Date

Address: 120 S. LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

E-mail: jpkru@fitcheven.com

ADDRESS SHIPMENTS AND FORM TO THE ATTENTION OF:

Patent Depository  
American Type Culture Collection  
10801 University Blvd.  
Manassas, VA 20110-2209 U.S.A.

STORAGE: Cultures are stored for 30 years from date of deposit or 5 years after the last request for a sample, whichever is longer, as required under the rules of patent offices in most countries.

FEES: For current fees, check our Web site at [www.atcc.org](http://www.atcc.org), request a fee sheet by e-mail to [applied-sci@atcc.org](mailto:applied-sci@atcc.org), or call (703) 365-2700 ext. 320. All fees are subject to change.

ATCC USE ONLY: ATCC DESIGNATION \_\_\_\_\_ REC'D \_\_\_\_\_ V.T. RESULT \_\_\_\_\_

Name of Deposit \_\_\_\_\_ Strain Designation: \_\_\_\_\_

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Fungi, Aspergillus oryzae ATCC No. 14156

2. Strain designation (i.e., number, symbols, etc.) ATCC No. 14156

The strain designation must correspond with the vial labels.

3. Is this an original deposit under the Budapest Treaty? YES

4. Is this a request for a conversion of a deposit already at ATCC to meet the requirements of the Budapest Treaty? If so please indicate ATCC designation. YES ATCC No 14156

5. Is this deposit a mixture of microorganisms or cells? NO

6. Provide details necessary to cultivate, test for viability, and store deposit. If mixture, provide description of components and a method to check presence. If plasmid, provide name of host and antibiotic resistance.

SAME AS ATCC 14156

7. Provide sufficient description so that ATCC may confirm deposit properties (e.g., Gram negative rod).

SAME AS ATCC 14156

- a. If deposit is a cell culture, is it being cultured in the presence of antibiotics? If so, please list the antibiotics.

N/A

- b. If deposit is hybridoma, what is the isotype of antibody produced? N/A

8. Is this strain hazardous to humans? NO Animals? NO Plants? NO. If yes, what is the recommended biosafety level for working with this strain? \_\_\_\_\_. (Refer to Biosafety in Microbiological and Biomedical Laboratories, 4th ed. U.S. Dept. of Health and Human Services at [www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm](http://www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm)).

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b) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to requestors which satisfy patent offices in countries not signatory to the Budapest Treaty? Yes \_\_\_\_ No X  
If yes state which countries. \_\_\_\_\_

Please note that if you are converting your deposit to meet the requirements of the Budapest Treaty and your deposit has already been released for distribution due to the issuance of a U.S. patent, you **cannot** restrict it from further distribution.

After a U.S. patent issues and we are so notified, ATCC makes the culture available to anyone who requests it, as allowed under USPTO Rules and Regulations (37 CFR 1.808 [a][2]).

10. ATCC will notify you of your ATCC number after confirmation of viability testing is complete.

Name of individual to notify: JAMES P. KRUEGER

Fax: 312-577-7007

Phone: 312-577-7000

E-mail: jpkru@fitcheven.com

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Exp. Date: \_\_\_\_\_

Name shown on card: \_\_\_\_\_

(Please type or print clearly.)

\_\_\_\_\_  
Signature of card holder

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JAMES P. KRUEGER

FITCH EVEN TABIN & FLANNERY - SUITE 1600

120 S. LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

12. Name, address, telephone and facsimile number of your attorney of record. \_\_\_\_\_

JAMES KRUEGER, FITCH EVEN TABIN & FLANNERY, SUITE 1600, 120 S LaSalle St.  
Chicago, IL 60603 (Ref: Docket or Case No. 70482)

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JAMES P. KRUEGER

Typed Name

James P. Krueger

Signature

AUG 02 2001

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Name of Deposit \_\_\_\_\_ Strain Designation: \_\_\_\_\_

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Fungi; Rhizopus oryzae ATCC No. 9363

2. Strain designation (i.e., number, symbols, etc.) ATCC No. 9363  
The strain designation must correspond with the vial labels.

3. Is this an original deposit under the Budapest Treaty? YES

4. Is this a request for a conversion of a deposit already at ATCC to meet the requirements of the Budapest Treaty? If so please indicate ATCC designation. YES ATCC No. 9363

5. Is this deposit a mixture of microorganisms or cells? NO

6. Provide details necessary to cultivate, test for viability, and store deposit. If mixture, provide description of components and a method to check presence. If plasmid, provide name of host and antibiotic resistance.

SAME AS ATCC 9363

7. Provide sufficient description so that ATCC may confirm deposit properties (e.g., Gram negative rod).

SAME AS ATCC 9363

- a. If deposit is a cell culture, is it being cultured in the presence of antibiotics? If so, please list the antibiotics.

N/A

- b. If deposit is hybridoma, what is the isotype of antibody produced? N/A

8. Is this strain hazardous to humans? NO Animals? NO Plants? NO. If yes, what is the recommended biosafety level for working with this strain? \_\_\_\_\_. (Refer to Biosafety in Microbiological and Biomedical Laboratories, 4th ed. U.S. Dept. of Health and Human Services at [www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm](http://www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm)).

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b) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to requestors which satisfy patent offices in countries not signatory to the Budapest Treaty? Yes \_\_\_\_\_ No X  
If yes state which countries. \_\_\_\_\_

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Name of individual to notify: JAMES P. KRUEGER

Fax: 312-577-7007

Phone: 312-577-7000

E-mail: jpkru@fitchenv.com

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Name shown on card: \_\_\_\_\_

(Please type or print clearly.)

Signature of card holder \_\_\_\_\_

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JAMES P. KRUEGER

FITCH EVEN TABIN + FLANNERY - Suite 1600

120 S LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

12. Name, address, telephone and facsimile number of your attorney of record. \_\_\_\_\_

JAMES KRUEGER, FITCH EVEN TABIN + FLANNERY, Suite 1600, 120 S LaSalle St.  
Chicago, IL 60603 (Ref: Docket or Case No. 70482)

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JAMES P. KRUEGER

Typed Name

James P. Krueger

Signature

AUG 02 2001

Date

Address: 120 S LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

E-mail: jpkru@fitchenv.com

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Name of Deposit \_\_\_\_\_ Strain Designation: \_\_\_\_\_



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Fungi, Rhizopus oryzae NRRL 1472
2. Strain designation (i.e., number, symbols, etc.) NRRL 1472  
The strain designation must correspond with the vial labels.
3. Is this an original deposit under the Budapest Treaty? YES
4. Is this a request for a conversion of a deposit already at ATCC to meet the requirements of the Budapest Treaty? If so please indicate ATCC designation. NO, DEPOSITED AT ARS
5. Is this deposit a mixture of microorganisms or cells? NO
6. Provide details necessary to cultivate, test for viability, and store deposit. If mixture, provide description of components and a method to check presence. If plasmid, provide name of host and antibiotic resistance.  
SAME AS NRRL 1472
7. Provide sufficient description so that ATCC may confirm deposit properties (e.g., Gram negative rod).  
SAME AS NRRL 1472
  - a. If deposit is a cell culture, is it being cultured in the presence of antibiotics? If so, please list the antibiotics.  
N/A
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8. Is this strain hazardous to humans? NO Animals? NO Plants? NO. If yes, what is the recommended biosafety level for working with this strain? \_\_\_\_\_. (Refer to Biosafety in Microbiological and Biomedical Laboratories, 4th ed. U.S. Dept. of Health and Human Services at [www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm](http://www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm)).
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\_\_\_\_\_  
Signature of card holder

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JAMES P. KRUICK

James P. Kruick

8/27/01

Typed Name

Signature

Date

Address: 120 S. LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

E-mail: JPKRU@FITCHEN.COM

ADDRESS SHIPMENTS AND FORM TO THE ATTENTION OF:

Patent Depository  
American Type Culture Collection  
10801 University Blvd.  
Manassas, VA 20110-2209 U.S.A.

STORAGE: Cultures are stored for 30 years from date of deposit or 5 years after the last request for a sample, whichever is longer, as required under the rules of patent offices in most countries.

FEES: For current fees, check our Web site at [www.atcc.org](http://www.atcc.org), request a fee sheet by e-mail to [applied-sci@atcc.org](mailto:applied-sci@atcc.org), or call (703) 365-2700 ext. 320. All fees are subject to change.

ATCC USE ONLY: ATCC DESIGNATION \_\_\_\_\_ REC'D \_\_\_\_\_ V.T. RESULT \_\_\_\_\_

Name of Deposit \_\_\_\_\_ Strain Designation: \_\_\_\_\_

## Budapest Treaty Deposits

# American Type Culture Collection

10801 University Blvd., Manassas, VA 20110-2209  
Phone (703) 365-2700; fax (703) 365-2745; e-mail [applied-sci@atcc.org](mailto:applied-sci@atcc.org)

# ATCC™

TO DEPOSIT OR TO CONVERT A DEPOSIT TO MEET THE REQUIREMENTS OF THE BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### ALL QUESTIONS MUST BE COMPLETED IN ENGLISH. PLEASE USE ONE FORM FOR EACH STRAIN DEPOSITED.

1. Name of deposit. If **microorganism**, give complete scientific name including genus and species and source of material; if **virus**, give name, whether plant or animal, and source including geographic location; if **cell line**, give tissue and species, geographical source of isolation, and any known hazards associated (HIV, EBV, etc.); if **genetic materials**, give name of organism from which vector, clone or library is derived, source of the DNA insert identified by species (e.g. human, mouse) or scientific name, and give name of gene and identity of the host organism; if **consortia or mixed culture**, each component of the mixture must be identified; if **seeds, embryos, insect eggs, etc.**, give common name, scientific name, and geographical source.  
FUNGI, RHIZOPUS ORYZAE NRRL 1891
2. Strain designation (i.e., number, symbols, etc.) NRRL 1891  
The strain designation must correspond with the vial labels.
3. Is this an original deposit under the Budapest Treaty? YES
4. Is this a request for a conversion of a deposit already at ATCC to meet the requirements of the Budapest Treaty? If so please indicate ATCC designation. NO, DEPOSITED AT ARS
5. Is this deposit a mixture of microorganisms or cells? NO
6. Provide details necessary to cultivate, test for viability, and store deposit. If mixture, provide description of components and a method to check presence. If plasmid, provide name of host and antibiotic resistance.  
SAME AS NRRL 1891
7. Provide sufficient description so that ATCC may confirm deposit properties (e.g., Gram negative rod).  
SAME AS NRRL 1891
  - a. If deposit is a cell culture, is it being cultured in the presence of antibiotics? If so, please list the antibiotics.  
N/A
  - b. If deposit is hybridoma, what is the isotype of antibody produced? N/A
8. Is this strain hazardous to humans? NO Animals? NO Plants? NO. If yes, what is the recommended biosafety level for working with this strain? \_\_\_\_\_. (Refer to Biosafety in Microbiological and Biomedical Laboratories, 4th ed. U.S. Dept. of Health and Human Services at [www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm](http://www.cdc.gov/od/ohs/biosfty/bmbl4/bmbl4toc.htm)).
9. Availability: Prior to the issuance of a U.S. Patent, ATCC will only make a culture available as instructed by the depositor or relevant patent office. Samples must be provided to a specific investigator if a pertinent patent office under the Budapest Treaty instructs ATCC to do so. The following questions must be answered:
  - a) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to anyone who requests a culture? If yes there are no restrictions on distribution. Answering no will ensure the deposit is not available until the patent has issued. Yes \_\_\_\_\_ No X
  - b) As of date of deposit or conversion to meet the requirements of the Budapest Treaty, do you wish the deposit to be made available to requestors which satisfy patent offices in countries not signatory to the Budapest Treaty? Yes \_\_\_\_\_ No X  
If yes state which countries. \_\_\_\_\_

Please note that if you are converting your deposit to meet the requirements of the Budapest Treaty and your deposit has already been released for distribution due to the issuance of a U.S. patent, you **cannot** restrict it from further distribution.

After a U.S. patent issues and we are so notified, ATCC makes the culture available to anyone who requests it, as allowed under USPTO Rules and Regulations (37 CFR 1.808 [a][2]).

10. ATCC will notify you of your ATCC number after confirmation of viability testing is complete.

Name of individual to notify: JAMES P. KRUCE

Fax: 312-577-7007

Phone: 312-577-7000

E-mail: jpkruc@Fitcheven.com

11. Payment by check, or credit card (Mastercard, VISA or American Express), must accompany the deposit unless prior arrangements for billing have been made and approved. ATCC accepts Purchase Orders in the correct amount:

Purchase Order No. \_\_\_\_\_

Check No. \_\_\_\_\_

Credit Card number. Please indicate MasterCard, VISA, or AE. \_\_\_\_\_

Exp. Date: \_\_\_\_\_

Name shown on card: \_\_\_\_\_

(Please type or print clearly.)

Signature of card holder \_\_\_\_\_

PAYMENT: ATCC MUST HAVE A BILLING ADDRESS, CONTACT PERSON, PHONE AND FAX NUMBER FOR ALL DEPOSITS:

JAMES P. KRUCE

FITCH EVEN TABIN & FLANNERY - Suite 1600

120 S. LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

12. Name, address, telephone and facsimile number of your attorney of record.

JAMES KRUCE, FITCH EVEN TABIN & FLANNERY, Suite 1600, 120 S LaSalle St.  
Chicago IL 60603 (Ref: Docket or Case No. 70482)

13. **MUST BE COMPLETED.** Deposited on behalf of: (Verify with your management who owns the deposit. The owner is usually a company or institute and not an individual.)

Cargill Inc.

I understand and agree that the deposit may not be withdrawn by me for a period specified in Rule 9.1 of the Budapest Treaty (at least 30 years after the date of deposit or 5 years after the date of the most recent request for the deposit, whichever is longer), and that if a culture should die or be destroyed during the life of the patent or the period of time so specified, it is my responsibility to replace it with a living culture of the same organism or cell. In the cases of viruses, cell cultures, plasmids, embryos, and seeds, it is my responsibility to supply a sufficient quantity for distribution for the period of time specified above.

JAMES P. KRUCE

Typed Name

[Signature]

Signature

8/27/01

Date

Address: 120 S. LaSalle St. Chicago, IL 60603

Phone: 312-577-7000

Fax: 312-577-7007

E-mail: jpkruc@Fitcheven.com

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Name of Deposit \_\_\_\_\_ Strain Designation: \_\_\_\_\_